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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1976

No. 76-1038

STEPHANIE ALLAN, et al,

Appellants,

vs.

RICHARD AUSTIN, Individually and as
Secretary of State of the State of Michigan, et al,

Appellees.

On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division.

# MOTION TO DISMISS OR AFFIRM

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**On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division.**

## MOTION TO DISMISS OR AFFIRM

The Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the appeal from the final judgment and decree of the District Court be dismissed or affirmed on the ground that the argument is so insubstantial as to warrant no further argument.

## STATEMENT

This is an appeal from a final judgment and decree of the United States District Court for the Eastern District of Michigan entered on October 6, 1976 upholding the constitutionality of Michigan statute 1976 PA 94 which amended the procedure for the qualification of "new" parties for general election

ballot positions. The 2 to 1 opinion of the United States District Court for the Eastern District of Michigan is reported at 419 F Supp 1002 and is set forth in the appendix to Appellants' Jurisdictional Statement at pp 1a-51a.

## JURISDICTION

Appellants in this action filed a complaint for declaratory judgment and injunctive relief on June 16, 1976. In their complaint they sought a declaration from the Court that 1976 PA 94 is unconstitutional. They further sought preliminary and permanent injunctive relief restraining and preventing the Defendants from enforcing Act 94.

In its opinion and order the Court upheld the constitutionality of Act 94 and denied permanent injunctive relief. However, because the passage of Act 94 in late April 1976 ". . . Caught Plaintiffs at a particularly prejudicial and inopportune time to begin attempting to comply with the new requirements . . ." (Jurisdictional Statement, p 31a), the Court enjoined enforcement of Act 94 for the November 1976 general election. Appellees have not appealed this award of injunctive relief.

As is noted in Appellants' Jurisdictional Statement Appellants have taken an appeal to both this Court and the United States Court of Appeals for the Sixth Circuit. It appears that Appellants have done so because they are uncertain as to the appropriate forum for this appeal. It is Appellees' position that the appropriate forum for this appeal is the Supreme Court of the United States rather than the United States Court of Appeals for the Sixth Circuit. Jurisdiction is conferred upon this Court by 28 USC, § 1253, which provides:

> "Except as otherwise provided by law, any party may



> appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any act of congress to be heard and determined by a district court of three judges."

In *MTM, Inc* v *Baxley,* 420 US 799; 95 S Ct 1278; 43 L Ed 2d 636 (1975), this Court set forth the criteria for determining whether an appeal under 28 USC, § 1253, should be directed to the Supreme Court rather than to the Court of Appeals:

> ". . . We conclude that a direct appeal will lie to this court under section 1253 from the order of a 3-judge federal court denying interlocutory or permanent injunctive relief only where such order rests upon resolution of the merits of the constitutional claim presented below."
> [420 US at 804]

There is no question but that in this case the order of the District Court rests upon a resolution of the merits of the constitutional claim presented to that Court. The Court denied appellants the permanent injunctive relief they sought and held that Act 94 is constitutional.

Given the fact that the statute in controversy involves election procedures, timely resolution of the issues raised by this appeal is of prime importance. The next general election in Michigan will occur in November of 1978 when voters will be going to polls to elect, among others, the highest officeholders of the State. A primary election will be held in August of 1978. If the decision of the District Court is affirmed, then appellants will be required to meet the requirements of Act 94 in order to obtain ballot status for the November 1978 election. Furthermore, in order to obtain a position on the November 1978 ballot "new" political parties must begin the ballot qualification procedure at least six months prior to that election,

1954 PA 116, § 685, as amended; MCLA 168.685; MSA 6.1685. Thus, in order to insure that the 1978 elections in Michigan are conducted in an orderly and constitutional fashion, the issues raised by this appeal must be resolved by May of 1978, a year and three months from the filing of Appellants' Jurisdictional Statement.

If this appeal must first be pursued in the Court of Appeals because appellants sought declaratory as well as injunctive relief, it is likely that the ultimate constitutionality of Act 94 will not have been resolved by the time "new" political parties must begin the procedure of attaining ballot status. Because this is an appeal under 28 USC, § 1253, from an order of the District Court denying appellants permanent injunctive relief and because timely resolution of the issues raised on appeal is of prime importance, appellees contend that the proper forum for this appeal is the United States Supreme Court.

## STATUTE INVOLVED

On April 22, 1976, the State of Michigan enacted 1976 PA 94, MCLA 168.560a and 168.685; MSA 6.1560a and 6.1685, which is an amendment to the Michigan Election Law. Act 94 changes the procedure whereby new parties qualify for a position on the general election ballot. In Michigan, a new political party is a party which did not participate in the last state-wide general election, or a political party which participated in the last state-wide general election but whose "principal candidate" received a vote equal to less than 1% of the total number of votes cast for the successful candidate for the office of Secretary of State at the last preceding election in which a Secretary of State was elected, MCLA 168.685; MSA 6.1685.

Previously, new political parties qualified for a position on



the general election ballot by means of petition. A political party was required to gather signatures equal to 1% of the votes cast for the successful candidate for Secretary of State. The statute required the signatures to be gathered within a six months period. Both the "principal candidate" requirement and the petition requirement were upheld in the case of *Communist Party* v *Austin*, 362 F Supp 27 (ED Mich, 1973), *judgment vacated* 94 S Ct 919; 40 L Ed 2d 278, *aff'd on remand* 381 F Supp 544 (ED Mich, 1974).

Act 94 continues the "principal candidate" and petition requirements for new parties seeking a position on the general election ballot, MCLA 168.685; MSA 6.1685. Act 94, also, adds a requirement which new political parties must satisfy in order to obtain a position on the general election ballot. Specifically, MCLA 168.560b; MSA 6.1560b, provides:

"(1) The primary election ballot shall provide a separate column or row which shall contain the name of each political party qualified as a party under section 685 by filing of petitions in a period of 2 years before the primary ballot.

"(2) The names of the parties as provided in subsection (1) shall follow a statement 'I desire that the party indicated shall have its name, party vignette, and candidates listed on the next general election ballot.' This statement shall appear only once on a ballot.

"(3) A voter shall be entitled to vote for candidates of 1 political party only, or to indicate a desire that 1 party and its candidates appear on the general election ballot.

"(4) To qualify to have its name, party vignette, and candidates appear on the general election ballot a party whose party name only appears on the primary ballot shall

> receive a vote total of more than 3/10 of 1% of the total number of voters appearing at that primary election as shown by the poll books."

Thus, Act 94 requires a new political party to participate in the August primary which precedes the November general election in which that party desires to run candidates for election. If a new political party obtains a vote total of .3% of the total number of voters appearing at that primary election, the party qualifies for ballot status at the November general election. It is estimated that approximately 4,500 to 5,000 votes will be necessary to meet the .3% primary performance requirement (Jurisdictional Statement, p 21a).

## THE QUESTION IS INSUBSTANTIAL

The decision of the Court below is clearly correct. In *Jenness* v *Fortson*, 403 US 431; 91 S Ct 1970; 29 L Ed 2d 554 (1971), this Court held that the states may constitutionally require new and minority political parties seeking ballot status to demonstrate a modicum of community support before such status is granted. This Court stated:

> "There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election . . ." [403 US at 442]

Subesquently, in *Bullock* v *Carter*, 405 US 134; 92 S Ct 849; 31 L Ed 2d 92 (1972), this Court stated, citing its decision in *Jenness* v *Fortson, supra*, that the state has a legitimate interest in regulating the number of candidates on the ballot in order



to prevent the clogging of election machinery, overcrowded ballots, voter confusion, and runoff elections (*Bullock* v *Carter*, 405 US at 145). Finally, in *American Party of Texas* v *White*, 415 US 767; 94 S Ct 1296; 39 L Ed 2d 744 (1974), and *Storer* v *Brown*, 415 US 724; 94 S Ct 1274; 39 L Ed 2d 714 (1974), this Court integrated its previous decisions dealing with ballot access by minority political parties. Based upon the decisions in *American Party of Texas* v *White, supra*, and *Storer* v *Brown, supra*, it is now clear that states have a compelling interest in requiring new and minority political parties seeking ballot status to demonstrate a modicum of community support. Further, it is clear that the state may designate any method for demonstrating such support, and such method is constitutional unless it unreasonably prevents parties from achieving ballot status. See also *Lubin* v *Panish*, 405 US 709; 94 S Ct 1315; 39 L Ed 2d 702 (1974).

The traditional method for achieving ballot status, which is required by over thirty states, is the petition method. The Michigan Election Law, before it was amended, also required that new political parties achieve ballot status solely by means of petitions. However, experience over time has revealed that at least in Michigan the petition method is an extremely imprecise method for measuring community support.

At the hearing held in the Court below appellees submitted the testimony of Appellee Apol, Director of Elections, as well as exhibits which demonstrated the imprecision of the petition method. For example, Michigan Election Law provides that a party participating in an election becomes entitled to automatic ballot status for the next general election if the principal candidate of that party obtains a vote equal to 1% of the vote cast for the successful candidate for Secretary of State at the last election for that office, MCLA 168.685. Similarly, under MCLA 168.685, before it was amended by 1976 PA 94, a political party which sought to achieve ballot status by the petition

method was required to obtain signatures on petitions equal to 1% of the vote cast for the successful candidate for Secretary of State. Appellee Apol testified that although many parties have qualified for ballot status under the petition method over the past ten years, only two "new" political parties have achieved automatic ballot status. Thus, although new political parties were able to obtain a position on the ballot by means of petition, they were not able to retain that position by securing a sufficient number of votes at the election notwithstanding the fact that the requirement for obtaining ballot status by means of petition is identical to the requirement for obtaining automatic ballot status after an election.[1] The summary of the evidence introduced by appellees is found in the Opinion of the Court below (Jurisdictional Statement, pp 11a-12a).

Significantly, the testimony of appellants' own expert witnesses, Warren Miller and Donald Warren, upon cross-examination supports the finding of the Court below that petitions do not measure community support. Dr. Miller stated that the act of petition signing does not indicate support for the political party by the petition signer, but rather indicates a willingness on the part of the signer to give the new political party a "chance" to appear on the ballot.

While the State may have an interest in assessing the number of voters willing to give a new political party a "chance" to appear on the ballot, the state has "an interest, if not a duty," to assess the actual support of a political party in order to

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[1]

It must be noted that all Appellant parties participated in the August 1976 party qualification primary, and none met the .3% performance requirement. Because of the order of the Court below, the parties had ballot status for the November, 1976 general election. However, they all failed to obtain a sufficient number of votes to secure automatic ballot status for the next general election.



prevent the evils of overburdened electoral machinery, voter confusion, overcrowded ballots, and frivolous or fraudulent candidacies *Bullock* v *Carter, supra,* 405 US at 145. Because the petition process is so deficient in measuring community support, the Michigan legislature has devised a new method for measuring support by enacting 1976 PA 94.

Prior to the enactment of Act 94, preparations for the 1976 elections in Michigan indicated that a total of 11 political parties might qualify for ballot status for the November 1976 election. Thus, the existence of "multitudinous fragmentary groups" was more than "theoretically imaginable," *Williams* v *Rhodes,* 393 US 23, 33; 89 S Ct 5, 21 L Ed 2d 24 (1968). The Court below found that the facts and circumstances which led to the passage of Act 94 appeared to pose "an existing danger which is neither remote nor conjectural," (Jurisdictional Statement, p 14a).

By statute, in Michigan voters must be provided with a straight party ticket option at the polls. See MCLA 168.705 (paper ballots), 168.775 (voting machines), 168.795 (electronic voting machines). In 1964 the Michigan legislature attempted to eliminate the straight ticket voting option by means of 1964 PA 240. However, the people of the state in a referendum held in 1964 overwhelmingly rescinded 1964 PA 240 by a vote of 1,515,875 to 795,546. At the hearing below Appellee Apol testified that there is no voting machine available in the United States today with the capacity to handle more than nine political parties and still provide the straight party ticket option that Michigan law mandates. Appellee Apol testified that of Michigan's 6,972 precincts, 4,322 are served by voting machines. Thus, Apol testified that the overwhelming majority of Michigan's precincts utilize voting machines which have a nine party capacity; the only feasible way a ballot having greater than that number could be accommodated would be by paper ballots, two machines for each voter, or punch cards

if the new parties ran limited slates. He testified that paper ballots are an extremely cumbersome method utilized in only a few of Michigan's smaller precincts. According to Apol a last minute change to a voting method other than machines caused by more than nine parties achieving ballot status would overburden and clog the state's election machinery, and that the number of parties, candidates and offices involved would cause voter confusion and great delay.

Although the Michigan legislature may have enacted Act 94 in response to the very real possibility that more than nine political parties would appear on the November 1976 general election ballot, Act 94 allows an unlimited number of political parties to appear on the ballot. In enacting Act 94 the Michigan legislature made a legislative determination that voter confusion and the clogging of election machinery *should be risked* if all of the parties which achieve a position on the ballot have community support. Conversely, the legislature has determined that if the parties do not have community support, then the interest of the state in conducting an orderly, accurate election in which there is a minimum of voter confusion outweighs the interest of political parties in achieving a position on the ballot and the interest of the state, itself, in providing the voters with the greatest possible choice. A ballot which is made overcrowded by political parties which do not enjoy a modicum of community support is a ballot which denies voter choice because of the very real consequences of such a ballot.

The Court below summarized the evidence introduced by appellees as follows:

> "The facts and circumstances underlying the passage of Public Act 94 may be summarized as follows: (1) over a ten-year period, the petition requirement for ballot access, standing alone, proved to be an imprecise tool for measuring true voter support; and (2) in 1976, more new parties



> sought to qualify by the petition method than it was technically possible for the state's voting machines to handle . . ." (Jurisdictional statement, p 15a)

The interests the legislature of the State of Michigan sought to protect have been declared by this Court to be legitimate and compelling state interests. In *Lubin* v *Panish*, 415 US 709, 715, 716; 94 S Ct 1315; 39 L Ed 2d 702 (1974), this Court recognized that:

> "The means of testing the seriousness of a given candidacy may be open to debate; the fundamental importance of ballots of reasonable size limited to serious candidates with some prospects of public support is not. Rational results within the framework of our system are not likely to be reached if the ballot for a single office must list a dozen or more aspirants who are relatively unknown or have no prospects of success."

The Court below recognized that the Michigan legislature was under a duty to protect the political process from frivolous candidacies and that it furthered this duty when it made a legislative determination that the new standards set forth in Act 94 more accurately gauge community support (Jurisdictional Statement, p 17a). The Court below observed that Act 94 although enacted in response to the possibility that the state's voting machines could not be utilized, does not restrict ballot access to a specified number of political parties. The Court stated:

> ". . . Although the legislature was properly concerned with the possibility of the ballot exceeding the capacity of available voting machines, it did *not* foreclose participation beyond that capacity. Thus, Act 94 provides real, not merely theoretical access to the ballot and if new parties demonstrate the requisite modicum of support, the state

will accept the attendant burden, expense and disadvantage of paper ballots or modification of its voting procedure to accommodate them. It is important to recognize that all state efforts in this regard are by definition designed to *restrict* candidate and party access. *Storer, supra,* notes:

"'As we indicated in Rosario [*Rosario* v *Rockerfeller,* 410 US 752; 93 S Ct 1243; 36 L Ed 2d 1 (1973)], *the Constitution does not require the state to choose ineffectual means to achieve its aims.* To conclude otherwise might sacrifice the political stability of the state, with profound consequences for the entire citizenry, merely in the interest of the particular candidates and their supporters having instantaneous access to the ballot." 415 at 743. (Emphasis supplied.) (Jurisdictional Statement, p 18a)

Thus, the Court below followed decisions of this Court and held that the state may constitutionally restrict ballot access to political parties and candidates that demonstrate a modicum of community support in order to protect the integrity of the electoral process. The Court below also reviewed the specific requirements of Act 94 in order to determine whether the .3% primary vote requirement of Act 94 is overly burdensome. In so doing the Court below followed the procedure for review of statutes restricting ballot access established by this Court in prior decisions, *Storer* v *Brown, supra; American Party of Texas* v *White, supra; Bullock* v *Carter, supra; Jenness* v *Fortson, supra; Williams* v *Rhodes, supra.* In reviewing these decisions it becomes clear that this Court has established a two step procedure for reviewing the constitutionality of statutes which limit ballot access.

The first step is to determine whether the statute serves a compelling state interest. As was discussed above, the Court below held that Act 94 serves a compelling state interest be-



cause it seeks to limit ballot access to parties with community support in order to insure the integrity of the electoral process. The second step requires the Court to examine the statute to determine whether the statute creates an insurmountable burden to ballot access, e.g. *Williams* v *Rhodes, supra.* For example, in *Bullock* v *Carter, supra,* this Court recognized that the goal the Texas statute sought to achieve, restricting ballot access, was a legitimate goal. However, this Court declared the Texas statute unconstitutional because the method chosen was overly restrictive.

This Court has recognized that each state may establish its own rules for achieving ballot status and that the constitutionality of such statutes depends upon the height and breadth of the obstacles placed before the parties seeking ballot status, *Storer* v *Brown,* 415 US at 723. The Court has also recognized that the method chosen by the state need not always be a "completely precise or satisfactory barometer" of actual community support, *American Party of Texas* v *White,* 415 US at 786.

In their jurisdictional statement as well as in their arguments to the Court below, appellants argue that the Act 94 primary presents an insurmountable obstacle to ballot access by new political parties. However, the evidence they amass in favor of this contention is insubstantial. Appellants expert witnesses, Warren and Miller, offered testimony which dealt with voter behavior at traditional political party primaries. Thus, appellants' attempted to demonstrate that the type of voter who votes at a party primary is not likely to vote for parties such as appellant political parties.

In comparing the Act 94 primary to political party primaries, appellants are "comparing apples and oranges." The fact is that at the time of the hearing there had never been a primary election such as an Act 94 primary election. Appellants' own

witnesses testified that the type of voter who votes for minor political parties at a general election does not ordinarily participate in political party primary elections. Such voters do not participate because they are not partisans aligned with either the Democratic or Republican parties. However, Miller also testified that individuals who vote for minor political parties are highly issue oriented. As a result, it may be expected that such individuals will turn out to vote in an Act 94 primary if appellant political parties have presented their platforms to such voters. Although such voters previously never had a reason to vote in a party primary election, Act 94, now, presents them with a reason to vote.

The scheme established by Act 94 is essentially identical to the Texas scheme upheld by this Court in *American Party of Texas* v *White, supra.* Both schemes require new political parties to demonstrate support from that portion of the electorate that is not committed to the established political parties. Under the Texas scheme, new political parties must demonstrate support by filing a list of registered voters who attend the party precinct conventions which are held on the same day as the primary elections for the major political parties. If the total list filed by a new political party does not contain names equal to 1% of the vote cast for governor at the last election for that office, the political party must supplement the list by obtaining notarized signatures on petitions which, when added to the list of convention delegates, is equal to the above statutorily established number. The petitions may not be circulated until after the primary election, and neither the petitions nor the lists may contain names or signatures of voters who participated in the primary. Furthermore, the new political parties are given only 55 days to circulate petitions under the Texas scheme. See Texas Election Code, art 13.45.

In the *American Party of Texas* case, this Court noted that under the Texas procedures, parties circulating petitions would



have to obtain approximately 400 notarized signatures per day, assuming 100 canvassers were circulating petitions, 415 US at 786. The Court also noted that the new political parties would have to establish community support from a "reduced pool" because the state statute prohibited signatures by voters who participated in a major party primary election, *American Party of Texas* v *White,* 415 US at 785.

Thus, under the Texas scheme, as under the Act 94 scheme, new political parties are required to compete with major political parties for supporters. Such parties are required to establish support from among that pool of voters who do not participate in a major party primary election or other political party nomination procedures. The only difference between the two schemes is that in Michigan the parties must demonstrate support on primary election day[2] at a new type of election, whereas in Texas the parties must demonstrate support on primary election day and, if necessary, within a 55 day period thereafter. Appellees assert that this is an insubstantial difference which renders Act 94 constitutional under the decision of this Court in *American Party of Texas* v *White, supra.*

In examining the decision of the Court below it is clear that that Court based its decision of constitutionality of Act 94 upon previous decisions of this Court. In order to determine whether Act 94 unreasonably restricts ballot access the Court adopted the following standard derived from previous decisions of this Court:

> "*Storer, supra,* emphasizes that at the heart of the matter is the ultimate question whether a 'reasonably diligent' party or candidate can be expected to satisfy the require-

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[2]

Michigan has "open" primary elections. Voters are not required to declare a party preference before they enter the voting booths.

ment. 415 US at 724. *American Party of Texas, supra,* citing *Jenness, supra, observes* that the burden:

> "'May not be so drastic or impractical as to be in reality a mere device to always, or almost always, exclude parties with significant support from the ballot. The constitution requires that access to the electorate be real "not merely theoretical".'" [415 US at 783]

"The validity of regulations which burden voter rights and ballot access is further governed by the principle that:

> "'If there are other reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a state may not choose the way of greater interference. If it acts at all, it must choose "less drastic means".'" [Citation omitted] *Dunn* v *Blumstein, supra,* 405 US at 343.

> "Applied to Act 94, these standards require an analysis of the percentage of support demanded by the state's provisions, the practicability of compliance, and whether effective 'less drastic' alternatives are available." (Jurisdictional Statement, pp 20a to 21a)

Utilizing the standards set forth above the Court below determined that Act 94 does not present an insurmountable obstacle to ballot qualifications but rather set forth a reasonable ballot qualification requirement. Based upon evidence introduced at the hearing the Court below estimated that approximately 4,500 to 5,000 votes will be necessary to meet the .3% primary performance requirement (Jurisdictional Statement, p 21a). The Court noted that Appellant Ronald Glotta, Chairman of the Communist Labor Party, testified that his party had that level of support in the Ninth State Representative District alone (Jurisdictional Statement, p 21a).



The Court specifically rejected appellants' argument that the Act 94 primary presents an insurmountable obstacle to ballot access because of the nature of the primary itself:

> ". . . Plaintiffs object, however, that the pool of available primary voters is limited because voters go to primaries to cast major party candidacy votes. In the context of determining whether a certain percentage of support was unreasonable where the eligible pool was reduced by the *actual disqualification* of primary voters, *American Party of Texas, supra,* noted:
>
> > "'[I]t is not apparent to us why the new or smaller party seeking voter support should be entitled to get signatures of those . . . who have already demonstrated their preference for other candidates for the same office the petitioning party seeks to fill.'" [415 US at 785].
>
> "Michigan's statutory scheme limits voters to the same exclusive choice but, significantly, *before* they have cast a 'disqualifying' ballot. Plaintiffs' contention that a impermissible barrier in effect arises from the nature of the primary itself . . . is without merit for a second reason . . . Both plaintiffs' experts, however, admitted having no familiarity with the procedures such as required by Act 94 or with any studies dealing with the primary of this type. It is implicit that the requirements of Act 94 necessitate that 'new' parties undertake the burden of marshalling their own support, including among others, those who would not otherwise attend the primary." [Jurisdictional Statement at pp 21a to 23a].

The Court below then went on to compare the requirements of Act 94 with requirements set forth in statutes previously held constitutional by this Court (Jurisdictional Statement, pp 23a to 26a).

The Court also determined that Act 94 is constitutional because "less drastic" means for achieving the purpose of limiting ballot access to parties with community support had not been demonstrated. The Court held:

> ". . . Michigan's experience with the petition requirement has demonstrated that the petition method alone is an imprecise tool that does not satisfactorily forecast voter support of new parties. The 'less drastic' alternatives which plaintiffs suggest possess the same deficiency in that they retain petition signatures as the basic index . . . Neither increasing the number required, shortening the circulation, or similar devises would necessarily cure the inherent defect of petitions. The legislature's use of the primary election machinery as an aid to ascertaining 'new' party support reflects an attempt to design a procedure for measuring real community support that improves upon the short comings of the petition method without abandoning it altogether.
>
> ". . . [N]o constitutional mandate or decision limits state action to the use of the petition method alone. *Lubin* v *Panish, supra,* notes that petitions 'for example' may be used to measure voter support for new parties. 415 US at 718. Furthermore, the method chosen may not 'always be a completely precise or satisfactory barometer of actual community support for a political party but the constitution has never required the states to do the impossible. . . ." *American Party of Texas* v *White, supra,* 415 US at 786-787.
>
> ". . . Absent some showing that an equally effective, less drastic alternative exists, the legislature's decision to fundamentally change the nature of the laws regulating ballot qualifications is subject only to the guidelines of



> constitutional reasonableness considered. . . ." (Jurisdictional Statement, 26a to 27a).

Thus, the decision of the Court below clearly parallels previous decisions of this Court. This Court has consistently held that states may restrict ballot access to those parties which have demonstrated a modicum of community support. Such statutes are unconstitutional only when they present an insurmountable obstacle to ballot access. The only aspect of Act 94 which renders it unique in comparison to statutes previously reviewed by this Court is that Act 94 establishes a new criterion for measuring community support. Based upon the evidence introduced by the parties below, the Court below concluded that this new criterion does not present an insurmountable obstacle to ballot access and is reasonably tailored to accomplish the purpose for which it was enacted. Appellees contend that the mere fact that Act 94 sets forth a new measure of community support does not present a sufficiently substantial question for purposes of appeal to this Court.

Finally, appellees must briefly address the argument of appellants that Act 94 is unconstitutional because it denies equal protection to parties fielding local candidates. This argument was specifically rejected by the Court below because the argument is misdirected. This is not a proper action in which to raise this constitutional question. Act 94 provides for the qualification of new political parties in the State of Michigan not for political parties in a particular county, district, or city. Once a party satisfies these requirements, it may set forth a full slate of candidates eligible for every office in the state.

Assuming for the moment that there is a defect in the Michigan Election Code because it does not provide for local political parties but imposes statewide requirements on all political parties, such defect is not found in Act 94. Rather, the defect is the absence of *any* statutory provision which allows for the

existence of localized minor political parties. This alleged unconstitutional defect cannot be applied to Act 94, because Act 94 when viewed within the context of the total Michigan Election Law deals with the method in which new political parties must qualify for a position on the ballot. If appellants feel that there is a defect in the Election Code, then such defect must be the subject matter of a separate action challenging the absence of provisions allowing local candidates and cannot be the basis for holding Act 94 unconstitutional.

## CONCLUSION

Therefore, we respectfully submit that the appellants present no substantial question for the decision of this Court, and that the petition be dismissed or the judgment of the District Court be affirmed.

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